

INVENTOR: Brodnick et al.

S/N 09/661,064

ELECTION

Claims 1-35 are pending in the present application. The Examiner has grouped claims 1-15 as drawn to a portable ECG device into Group I. Claims 16-25, drawn to an ECG monitor system, have been grouped into Group II. The Examiner then grouped claims 26-35, drawn to a method of remotely monitoring ECG data, into Group III. The Examiner requires election thereof. Accordingly, Applicant elects claims 1-15 of Group I, with traverse, for continued examination and prosecution in the instant case.

REMARKS

The Examiner asserts that the inventions of Groups II and I are related to one another as a combination and sub-combination. The Examiner further asserts that the combination (Group II) as claimed does not require the particulars of the sub-combination (Group I) as claimed because the combination does not require a wireless communication interface or ECG monitors having processors. According to the Examiner, "[t]he sub-combination has separate utility such as not having a local ECG device connected to the local communication interface to receive the ECG signals and provide the ECG in human discernable form but by providing for raw ECG data or just data storage and not display."

As indicated previously, the Examiner has grouped claims 26-35 as being drawn to a method of remotely monitoring ECG data into Group III. According to the Examiner, the invention of Group III and the invention of Groups I and II are related as process and apparatus for its practice. Specifically, the Examiner asserts that the process (Group III), as claimed, may be practiced by another materially different apparatus that does not assess the ECG data and

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provide instructions to the patient based on the multi-channel ECG assessment but stores the ECG data in memory. As such, the Examiner believes that each of the inventions have acquired a separate status in the art because of the recognized divergent subject matter and therefore restriction for examination purposes is proper. Despite the election of claims 1-15 drawn to a portable ECG device of Group I, Applicant respectfully disagrees with the Examiner's restriction requirement.

Applicant agrees that inventions related as combinations and sub-combinations are distinct if they can be shown that the combination as claimed does not require the particulars of the sub-combination as claimed for patentability and the sub-combination has utility by itself or in other combinations. However, MPEP §806.05(c)(I) states that restriction is proper if reasons exist for insisting upon the restriction; i.e., "separate classification status or field of search". In the present application, however, the claims of Group I and Group II both relate to ECG devices and/or systems and are classified as such in class 600. The common classification of the claims of Group I and Group II into class 600 is indicative that each of the "inventions" have not attained a separate status in the art. Furthermore, as the claims of each Group are classified in class 600, Applicant does not believe that the difference between the fields of search for each Group necessitates restriction as set forth by the Examiner.

Additionally, the Examiner has grouped claims 26-35 as being drawn to a method of remotely monitoring ECG data classified in class 600, sub-class 509 into Group III. While Applicant believes that the restriction in the present case is unwarranted, nevertheless, Applicant respectfully believes that, at a minimum, the claims of Group III should be joined into Group I as

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claims 1-15, drawn to a portable ECG device, are both classified in class 600, sub-class 509.

Claims 26-35 and claims 1-15 have acquired a common status in the art as evidenced by the common classification and subclassification. As such, Applicant does not believe that the claims of 26-35 require a separate field of search than claims 1-15.

The Examiner also indicated that the inventions of Group III and the inventions of Groups I and II are related as a process and apparatus for its practice. Accordingly, the Examiner asserts that the inventions are distinct since the processes claimed may be practiced by another materially different apparatus that does not assess the ECG data and provide instructions to the patient based on a multi-channel ECG assessment but stores the ECG data in memory. However, it should be noted, the method called for in claim 26 includes the steps of providing an ECG device, acquiring multi-channel ECG from the patient at a location remote from a health care facility, and transmitting the multi-channel ECG to the centralized facility. Claim 1 calls for an ECG monitor connected to a patient to receive ECG signals from a plurality of lead wires and produce ECG data representative cardiac condition of the patient as well as a wireless communication interface coupled to receive the ECG data from the ECG monitor and transmit the patient ECG data to a health care provider. Additionally, claim 16 calls for a remote ECG monitor having multiple leads and multiple channels to acquire ECG signals from a patient, a remote communication interface to receive the ECG signals from the remote ECG monitor and transmit the ECG signals over a public communication system to a centralized facility, a local communication interface to receive the ECG signals, and a local ECG device connected to the local communication interface to receive the ECG signals and provide the ECG signals in human

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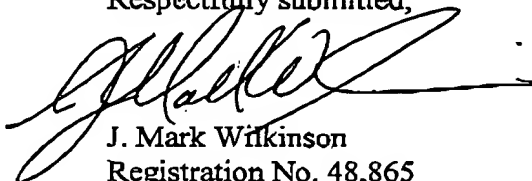
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discernible form. Accordingly, Applicant respectfully believes that which is called for in claims 1, 16, and 26 are not "distinct" within the meaning of MPEP §806.05(e) and therefore imposition of the restriction requirement was unnecessary and improper.

In light of the foregoing, Applicant respectfully believes that the restriction requirement has been traversed and therefore requests examination of claims 1-35 in the present application. Notwithstanding this traversal, Applicant has elected claims 1-15.

Applicant cordially invites the Examiner to contact the undersigned should the Examiner consider any matters unresolved.

Respectfully submitted,



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